



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2004

Ms. Jill Torbert  
Assistant District Attorney  
County of Bexar  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2004-3369

Dear Ms. Torbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200216.

The Bexar County Sheriff's Office (the "sheriff's office") received a request for information related to a complaint reported by the requestor's client. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Information is protected under common-law privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for*

*Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

After reviewing the submitted information, we find that it is not highly intimate or embarrassing. Further, we note that this information pertains directly to employees of the sheriff's office. As this office has often noted, the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. Thus, such information is not protected by privacy under section 552.101, and may not be withheld from disclosure on that basis. *See also* Open Records Decision Nos. 405 at 2 (1983) (manner in which public employee performed his or her job cannot be said to be of minimal public interest), 444 at 4 (1986) (public employee's personnel file information will generally be available to public regardless of whether it is highly intimate or embarrassing), 470 at 4 (1987) (public employee's job performance does not generally constitute private affairs), 473 at 3 (1987) (fact that public employee receives less than perfect or even very bad evaluation not protected by common-law privacy), 542 at 5 (1990) (information regarding public employee's qualifications is of legitimate concern to public). Accordingly, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy, and it must be released.

We note, however, that section 552.117(a)(2) may be applicable to some of the submitted information. Section 552.117(a)(2) excepts from disclosure the home address and telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code in electing confidentiality for such information.<sup>1</sup> *See* Gov't Code § 552.117(a)(2). We have marked information, pursuant to section 552.117, that the sheriff's office must withhold pursuant to section 552.117(a)(2) of the Government Code if that information pertains to an individual who is a currently licensed peace officer.

We also note, however, that if that particular information is not excepted from disclosure under section 552.117(a)(2), it may nevertheless be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of a current or former employee of a governmental body who timely requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). The determination of whether a particular item of

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<sup>1</sup>Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

information is excepted from disclosure under section 552.117(a)(1) must be made as of the date of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who requested confidentiality under section 552.024 for the information prior to the sheriff's office's receipt of this request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely request for confidentiality for such information under section 552.024. Accordingly, if any of the information that we have marked under section 552.117 is that of a current or former employee of the sheriff's office who timely elected under section 552.024 to keep his section 552.117 information confidential, then the sheriff's office must withhold that information pursuant to section 552.117(a)(1) of the Government Code.

If section 552.117 does not apply to this information, we further note that if the individual whose information is at issue is a county jailer as defined by section 1701.001 of the Occupations Code, the information we have marked pursuant to section 552.117 may be excepted under section 552.1175 of the Government Code. That section provides in part as follows:

(a) This section applies only to:

....

(2) county jailers as defined by Section 1701.001, Occupations Code;

....

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Therefore, if the individual whose information is at issue is a county jailer who elects not to allow access to this information in accordance with the procedures under section 552.1175 of the Government Code, the sheriff's office must withhold this information pursuant to

section 552.1175. If the individual is not a county jailer, then this information may not be withheld pursuant to section 552.1175.

Finally, we note that some of the submitted information may be confidential and not subject to release to the general public. However, the requestor and her authorized representative in this instance have a special right of access to information pertaining to the requestor. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the sheriff's office receives a further request for this information from an individual other than this requestor or her representative, the sheriff's office should again seek our decision.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

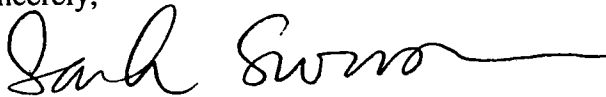
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 200216

Enc. Submitted documents

c: Ms. Melissa Castro  
115 East Travis, Suite 314  
San Antonio, Texas 78205  
(w/o enclosures)